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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board held a Special meeting on December 16, 2004, in Hearing Room #1, at the offices of the New Motor Vehicle Board ("Board").

2. **ROLL CALL**

Glenn E. Stevens, President of the Board, called the Special meeting to order at 8:45 a.m.

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| Present: | Robert V. Branzuela | Tom Novi |
| | Robert T. (Tom) Flesh | Executive Director |
| | Haig Papaian | Howard Weinberg |
| | Andy Robles | General Counsel |
| | Sushil K. Sharma | Robin Parker |
| | Alan J. Skobin | Senior Staff Counsel |
| | Glenn E. Stevens | |
| | David W. Wilson | |

Absent: David C. Lizárraga

3. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

a. **CONSIDERATION OF PROPOSED DECISION**

S & C MOTORS, INC., dba S & C KIA v. KIA MOTORS AMERICA, INC.
Protest No. PR-1894-04

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Protestant. Maurice Sanchez, Esq., of Adorno, Yoss, Alvarado & Smith represented Respondent.

Peter Welch, President of the California Motor Vehicle Dealers Association presented comments on the issue of the Board's jurisdiction.

The Public members of the Board deliberated in closed Executive Session at the conclusion of Agenda item 11.

b. **CONSIDERATION OF PROPOSED RULING**

NADER EGHTESAD, NADER CHRYSLER v. DAIMLERCHRYSLER
Protest No. PR-1928-04

Consideration of the Administrative Law Judge's Proposed Ruling, by the Public members of the Board.

This matter was postponed pending the arrival of Protestant.

c. **CONSIDERATION OF PROPOSED RULING**

SOUTAR'S NISSAN v. NISSAN NORTH AMERICA, INC.
Protest No. PR-1825-02

Consideration of the Administrative Law Judge's Proposed Ruling, by the Public members of the Board.

This matter was taken off the agenda because counsel for the parties stipulated to have it considered at the January 2005, General meeting.

4. **OPEN SESSION**

The members remained in Open Session. The Closed Session deliberations occurred after Agenda item 11.

5. **CONSIDERATION OF DECISION IN LIGHT OF JUDGMENT GRANTING PEREMPTORY WRIT OF ADMINISTRATIVE MANDAMUS**

UNIVERSITY FORD, dba BOB BAKER FORD v. FORD MOTOR COMPANY
Petition No. P-450-02

Consideration of the Decision in light of the Sacramento County Superior Court's Issuance of a Writ of Administrative Mandamus wherein the Board was ordered to vacate and set aside its Decision dated July 21, 2003, issued in the above-

entitled petition, by the Public members of the Board.

At the Board's request, this matter was postponed.

6. **CONSIDERATION OF A REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum and revised Guide to the New Motor Vehicle Board from Howard Weinberg. Mr. Weinberg summarized the changes to the Guide that now include all-terrain vehicles within the Board's jurisdiction, modified the section pertaining to Board issued subpoenas and enforcement thereof, and updated the codes to reflect statutory changes effective January 1, 2005. Mr. Flesh moved to adopt the Guide. Mr. Robles seconded the motion. The motion carried unanimously.

7. **CONSIDERATION OF THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

At the July 18, 2000, meeting, the members adopted an Employee Recognition Award Program to recognize staff for their accomplishments. The program was recently renamed the Solon C. Soteris Employee Recognition Award. The Committee recommended that this Award be presented to the staff of the New Motor Vehicle Board as a Silver Star Team Award, instead of an individual award for the July 2004 through December 2004 half. The Employee Recognition Silver Team Star Award would include a check for \$100.00 for each employee, a certificate from Joan Borucki, Director of DMV, and a certificate from the New Motor Vehicle Board. Messrs. Flesh and Papaian read the following staff accomplishments into the record:

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| Howard Weinberg | <ul style="list-style-type: none">• Legal knowledge related to improving Board operations resulted in a number of process improvements• Revised and updated the Board's website creating a more user-friendly resource to help utilize the services of the Board• Revised and updated Guide to the NMVB, cutting Board costs by putting on website and eliminating hard copy |
| Dawn K. Kindel | <ul style="list-style-type: none">• Excellent job performance in providing quality customer service, especially in resolving consumer complaints• Coordination of successful NAMVBC Conferences• Managed and completed a number of operations improvement projects effectively |
| Robin P. Parker | <ul style="list-style-type: none">• Legal knowledge related to improving Board operations applied to numerous process improvements• Skill in answering questions regarding the civil code and vehicle code• Managed numerous projects effectively• Conscientious work habits, and positive attitude in working with and helping coworkers and litigants to help resolve problems efficiently |

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|-------------------|---|
| Cara Peralta | <ul style="list-style-type: none"> • Legal knowledge related to improving Board operations resulted in numerous process improvements • Exceptional case management skills • Completed numerous projects in a timely manner • Efficient, highly motivated, and positive attitude |
| Linda Lighter | <ul style="list-style-type: none"> • Researched numerous complex issues relating to administrative matters • Coordinated paint project for office after the fire and flood • Positive attitude – improved Board/DMV relations |
| Kathy Tomono | <ul style="list-style-type: none"> • Outstanding organization and coordination of Board meetings resulted in high praise from Board members • Editor of newsletter, In-Site • Coordination of NAMVBC Conference, and Chair of three CSECC Campaigns • Positive attitude, energy and willingness to work long hours |
| Heather Collins | <ul style="list-style-type: none"> • Excellent job performance in providing quality customer service • Has been recognized in the Board's newsletter, In-Site, several times for helping consumers achieve a successful end to their complaints • Abilities to complete projects in a timely manner • Accurate, highly motivated, and positive attitude |
| Suzanne Takehara | <ul style="list-style-type: none"> • Organized and efficient manner in processing voluminous amounts of travel related materials by thoroughly researching options available • Arranging Board meeting sites • Maintaining legal cases • Professionalism and very pleasant demeanor |
| Nicole Angulo | <ul style="list-style-type: none"> • Outstanding customer service in handling extra calls when other staff are not available • Chairing the 2004 CSECC Campaign • Organizing Board meeting materials |
| Dana Lolmaugh | <ul style="list-style-type: none"> • High energy and positive attitude • Quickly and effectively responds to constituent requests • Excellent attendance • Outstanding performance in preparing legal notices and orders, and document requests |
| Eugene Ohta | <ul style="list-style-type: none"> • Developing, improving and supporting the Board's information systems • Manage and complete projects effectively • Exhibiting outstanding work habits, and positive attitude working with coworkers |
| Jackie Grassinger | <ul style="list-style-type: none"> • Exemplary customer service • Handling extra calls when other staff are unavailable, • Willingness to assist other staff in helping resolve difficult cases • Profiled in the In-Site newsletter for success in mediating disputes |

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|-----------------------|---|
| Susanna Badalyan-Deus | <ul style="list-style-type: none"> • Excellent job performance and outstanding customer service • Organized and efficient in processing voluminous amounts of letters for the mediation services • Outstanding ability to complete projects in a timely and accurate manner • Positive attitude |
| Jeannette Wilson | <ul style="list-style-type: none"> • Board's newest member of the staff • Excellent job performance in customer service • Profiled in the In-Site newsletter for success in mediating disputes |

Mr. Flesh moved to adopt the Committee's recommendation. Mr. Papaian seconded the motion. The motion carried unanimously.

5. **CONSIDERATION OF DECISION IN LIGHT OF JUDGMENT GRANTING PEREMPTORY WRIT OF ADMINISTRATIVE MANDAMUS**

UNIVERSITY FORD, dba BOB BAKER FORD v. FORD MOTOR COMPANY
Petition No. P-450-02

Consideration of the Decision in light of the Sacramento County Superior Court's Issuance of a Writ of Administrative Mandamus wherein the Board was ordered to vacate and set aside its Decision dated July 21, 2003, issued in the above-entitled petition, by the Public members of the Board.

The Public members of Board considered this matter in light of the Sacramento County Superior Court's issuance of a Writ of Administrative Mandamus ordering the Board to vacate and set aside its Decision dated July 21, 2003. The basis for the Court's decision was the Third District Court of Appeal's decision in *Phillips Mazda* that held the Board lacks jurisdiction over licensee (dealer or manufacturer) versus licensee (dealer or manufacturer) petitions in which the relief sought is adjudication of the dispute. Michael M. Sieving of the Law Offices of Michael M. Sieving represented Petitioner and was available to answer Public member questions.

Mr. Sharma moved to vacate the decision in light of the Court's order. Mr. Papaian seconded the motion. The motion carried unanimously.

8. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1ST QUARTER OF FISCAL YEAR 2004-2005 - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for the 1st quarter of fiscal year 2004-2005. Miss Kindel reported that the Board has expended 21% of its appropriated budget through the 1st quarter of fiscal year 2004-2005. Mr. Flesh commented that he was

concerned about the Board's reserves building too high. Mr. Novi indicated that the staff would review its projections for reducing the budget in light of the additional licensees added to its jurisdiction and report to the Board at the March 2005, General meeting.

9. **ANNUAL STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF ITS ANNUAL FEE (13 CCR § 553.10) - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the Board's collection of its annual fee. Miss Kindel reported that the fee collection was completed in November 2004, and more than \$758,000 was collected.

10. **SELECTION OF BOARD MEETING DATES FOR 2005**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning upcoming Board meeting dates. The members went off the record for this discussion. Mr. Stevens went on the record to announce the following schedule:

- January 26, 2005, Los Angeles – General Meeting
- March 8, 2005, Sacramento - General Meeting and CMCD A Dealer Day
- April 20, 2005, Indian Wells - Special Meeting (4th Annual Industry Roundtable) and CMCD A State Convention
- April 21, 2005, Indian Wells - General Meeting and CMCD A State Convention
- July 7, 2005, Sacramento – General Meeting
- September 22, 2005, San Francisco – General Meeting
- November 17, 2005, Los Angeles – General Meeting
- December 19, 2005, Sacramento – Special Meeting

11. **ANNUAL REPORT OF STAFF PARTICIPATION IN THE CALIFORNIA STATE EMPLOYEES CHARITABLE CAMPAIGN (CSECC)**

The members were provided with a memorandum from Tom Novi, Nicole Angulo, and Heather Collins concerning the Board's participation in the California State Employees Charitable Campaign (CSECC). Ms. Angulo reported that the Board achieved 100% participation from the staff with total contributions in the amount of \$2,422.95.

3. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

a. **CONSIDERATION OF PROPOSED DECISION**

S & C MOTORS, INC., dba S & C KIA v. KIA MOTORS AMERICA, INC.
Protest No. PR-1894-04

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

The Public members of the Board deliberated in closed Executive Session. Mr. Sharma moved to reject the Administrative Law Judge's Proposed Decision and remand the matter to the Administrative Law Judge to make a decision on the substantive merits of the protest. Mr. Flesh seconded the motion. The motion carried unanimously.

4. **OPEN SESSION**

The Public members returned to Open Session and Mr. Stevens announced the decision in Agenda item 3(a).

12. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), the Board shall convene in a closed Executive Session.

ORAL INTERVIEW OF AN ADMINISTRATIVE LAW JUDGE CANDIDATE, BY ALL MEMBERS OF THE BOARD - ADMINISTRATION COMMITTEE

The Public and Dealer members of the Board conducted an oral interview of an Administrative Law Judge candidate.

13. **OPEN SESSION**

The members returned to open session.

3. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

b. **CONSIDERATION OF PROPOSED RULING**

NADER EGHTESAD, NADER CHRYSLER v. DAIMLERCHRYSLER
Protest No. PR-1928-04

Consideration of the Administrative Law Judge's Proposed Ruling, by the Public members of the Board.

Agenda item was considered upon the arrival of Protestant. Oral arguments were presented before the Public members of the Board. Nader Egtesad presented arguments on behalf of Nader Chrysler. Mark Kennedy, Esq., of Wheeler Trigg Kennedy LLP, represented Respondent.

The Public members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Proposed Ruling. Mr. Papaian seconded the motion. The motion carried by a three-to-one vote with Mr. Sharma opposed.

4. **OPEN SESSION**

The Public members returned to Open Session and Mr. Stevens announced the decision in Agenda item 3(b).

14. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 11:40 a.m.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____
Glenn E. Stevens
President

New Motor Vehicle Board